

## NEW JERSEY'S ABOUTFACE ON CAPITAL PUNISHMENT

Colin Wark and John F. Galliher\*  
Missouri University-Columbia

\*Thanks are due Michael Radelet, Hugo Adam Bedau, Lorry Post, Richard Dieter, Celeste Fitzgerald, Abraham J. Bonowitz and Amanda Greer for assistance with an earlier version of this research.

### Abstract

New Jersey became the first state to abolish capital punishment in nearly 45 years. Prior to that the state had executed many prisoners and thus abolition represented an extreme change. We primarily used secondary data such as legislative debate to shed light on this legislation. The irony is that the 1973 U.S. Supreme Court Roe vs. Wade decision set the groundwork for this legislation. The Roman Catholic Church has since that decision become adamantly opposed to executions as contrary to the sanctity of human life. The significance of a coalition of the Roman Catholic Church and a liberal, pro-choice governor made this law possible.

## Introduction

New Jersey was the first state in over 40 years to abolish capital punishment.<sup>1</sup> Yet, New Jersey has historically been no stranger to executions having put to death 361 prisoners between the 17<sup>th</sup> century and 1963.<sup>2</sup> Bedau found that between 1907 and 1960 alone the state executed 68 prisoners, still showing no aversion to capital punishment.<sup>3</sup> We seek to account for this radical change in direction.

Earlier research on the origins of law demonstrated the utility of distinguishing between *triggering events* and *structural foundations*.<sup>4</sup> Triggering events involve the motivations and tactics of legislative sponsors and opponents. And structural foundations involve the historical, cultural, demographic, economic and political traditions that make legislation possible.

Among the structural foundations that make contemporary abolition possible it may be that the proportion of Roman Catholics in a state seems worth considering. The proportion of Roman Catholics in New Jersey ranked it 3<sup>rd</sup> in the nation behind Rhode Island and Massachusetts, nearly tied with Connecticut, New York and New Hampshire.<sup>5</sup>

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<sup>1</sup>NJ Rev § Stat 2C:11-3 (2007).

<sup>2</sup>Death Penalty Information Center, Executions in the United States, 1608-1976, By State, <http://www.deathpenaltyinfo.org/article.php?scid=8&did=1110> (last visited July 27, 2008).

<sup>3</sup>Hugo Adam Bedau, *Death Sentences in New Jersey 1907-1960*, 19 Rutgers Law Review 1-64 (1964).

<sup>4</sup>John F. Galliher & Linda Basilick, *Utah's Liberal Drug Laws: Structural Foundations and Triggering Events*, 26 Social Problems 284-297 (1979).

<sup>5</sup>ASSOCIATION OF RELIGIOUS DATA ARCHIVES, SOCIAL SCIENCE RESEARCH INSTITUTE, PENNSYLVANIA STATE UNIVERSITY, 2008. <http://thearda.com/mapsReports/maps/map.asp?variable=12&state=101&variable2=> (last visited August 4, 2008); GLENMARY RESEARCH CENTER, TABLE 1: CATHOLICS IN NATIONAL CONTEXT, 2000 [http://www.glenmary.org/grc/RCMS\\_2000/Catholic%20rankings\\_tables.pdf](http://www.glenmary.org/grc/RCMS_2000/Catholic%20rankings_tables.pdf). (last visited August 4, 2008).

None of these states have had an active death penalty program since the modern death penalty was approved by the U.S. Supreme Court in the 1970s.<sup>6</sup>

The puzzle is that in the 1960s while most Protestant denominations were divided and mute on the issue, the Roman Catholic Church was an outspoken proponent of executions arguing that "the state may punish by death persons guilty of serious crimes against a just social order."<sup>7</sup> Hugo Adam Bedau, who is arguably the dean of death penalty researchers, recalled: "When I was in New Jersey on the Princeton faculty in the late 1950s local Catholics were solidly for the death penalty".<sup>8</sup>

And Sister Helen Prejean remembered that "beginning in 1974 . . . the U.S. Conference of Catholic Bishops had begun to express 'pastoral concerns' about the death penalty" while prior to that time legislators, prosecutors judges and priests "used church teaching to legitimate their pro-death penalty stance."<sup>9</sup> But in the 1970s the U.S. Supreme Court provided an historical event that, combined with a dominant Roman Catholic community, created relevant structural foundations for death penalty abolition. After *Roe v Wade* in 1973 the Roman Catholic Church decided to oppose capital punishment for the sake of consistency.<sup>10</sup> According to numerous statements since, the Church has loftily proclaimed that being "pro life is a seamless garment" and thus the Church became an

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<sup>6</sup> *Gregg v Georgia* 428 U.S. 153 (1976).

<sup>7</sup> *Episcopal Church Opens Drive for Abolition of Death Penalty*, New York Times, Mar. 20, 1961, Pp. 1-14; John F. Galliher, Larry W. Koch, David Patrick Keys & Teresa J. Guess, *AMERICA WITHOUT THE DEATH PENALTY: STATES LEADING THE WAY* (2002).

<sup>8</sup> H. Bedau, pers. Comm.

<sup>9</sup> Sister Helen Prejean, *THE DEATH OF INNOCENTS: AN EYEWITNESS ACCOUNT OF WRONGFUL EXECUTIONS* (2005).

<sup>10</sup> *Roe v Wade* 410 U.S. 113 (1973).

unwavering opponent of both capital punishment and abortion.<sup>11</sup> Justice William Brennan, the U.S. Supreme Court's only Roman Catholic, opposed capital punishment but had supported *Roe v Wade* and thus there were several calls for his excommunication.<sup>12</sup> Former New Jersey Supreme Court Justice Stewart Pollock has recently noted that *Roe V. Wade* is an exceptional U.S. Supreme Court decision because of its profound impact upon public opinion.<sup>13</sup>

This one U.S. Supreme Court case seems to have served as an important historical event in heavily Roman Catholic states. Witness the following:

- 1) The Rhode Island State Supreme Court ruled in 1979 that the state's death penalty law passed in 1973 was unconstitutional.<sup>14</sup>
- 2) In Massachusetts the Supreme Judicial Court ruled in 1975, 1980 and 1984 that the state's death penalty law was unconstitutional.<sup>15</sup>
- 3) The New York State Supreme Court in 2004 determined that its 1994 death penalty law was unconstitutional, this after 19 years of death penalty legislative debate and annual vetoes by Roman Catholic governors Hugh Carey and Mario Cuomo.<sup>16, 17</sup>

<sup>11</sup>Timothy A. Byrnes, *How Seamless a Garment? The Catholic Bishops and the Politics of Abortion*, 33 *Journal of Church and State* 18-35 (1991); James R. Kelly, *Sociology and Public Theology: A Case-Study of Pro-Choice/Pro-Life Common Ground*, 60 *Sociology of Religion* 99-124 (1999).

<sup>12</sup>James J. Megivern, *THE DEATH PENALTY: AN HISTORICAL AND THEOLOGICAL SURVEY* (1997).

<sup>13</sup>Stewart Pollock, *Opinions for the people, opinions of the people*, Book Review, *Star-Ledger*, Jun 15, 2008, p. 6.

<sup>14</sup>*State v Robert Cline*, 121 R.I. 299, 397 A.2d 1309 (1979); *State v William H. Anthony*, 121 R.I. 954, 398 A.2d 1157 (1979).

<sup>15</sup>*Commonwealth v Robert E. O'Neal*, 369 Mass 242, 339 N.E.2d 676 (1975); *District Attorney for the Suffolk District v James Watson and others*, 381 Mass 648, 411 N.E.2d 1274 (1980); *Commonwealth v Abimael Colon-Cruz*, 393 Mass 150, 470 N.E.2d 116 (1984).

4) In New Hampshire in 2000 the state legislature abolished capital punishment only to have the governor veto the bill. Even so there is still no one on the state's death row.<sup>18</sup>

#### Data Sources

The information collected for this research was primarily from existing records. We used records of legislative public hearings and floor debates, records of governors' vetoes, and court decisions. These state records were supplemented by newspaper coverage of these events. In addition, Lorry Post, the Executive Director of Murder Victims for Reconciliation provided an inside look at the abolition process in New Jersey that he was involved in for many years.

#### Structural Foundations: New Jersey's Legal Culture

The method of selecting judges and prosecutors involves appointment by the state's governor with consent of the state senate.<sup>19</sup> The state supreme court has 7 members, 6 Democrats and one Independent. There are three women. Judges serve until retirement at age 70 and are largely immune from criticism.

The process of reinstating capital punishment in New Jersey after *Gregg vs. Georgia* in 1976 was delayed until 1982 by Governor Brendan Byrne's two vetoes in

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<sup>16</sup>*New York v Stephen S. LaVelle*, 3 N.Y. 3d 88, 817 N.E. 2d 341, 783 N.Y.S. 2d 485 (2004).

<sup>17</sup>James M. Galliher & John F. Galliher, *A "Commonsense" Theory of Deterrence and the "Ideology" of Science: The New York State Death Penalty Debate*, 92 *Journal of Criminal Law and Criminology* 307-333 (2002).

<sup>18</sup>DEATH PENALTY INFORMATION CENTER, 2008

<sup>19</sup>AMERICAN JUDICIARY SOCIETY, 2008.

1978.<sup>20</sup> Governor Byrne later argued that the death penalty was arbitrarily imposed. "I spent almost nine years as the prosecutor of Essex County. It was me who decided which cases should be exposed to the death penalty and that's shocking. . . . I remember one case where I withdrew a recommendation for the death penalty because the attorney for the defendant was having a nervous breakdown."<sup>21</sup>

The New Jersey Supreme Court decisions since reinstatement show that the court upheld a death sentence after blocking the first 28.<sup>22</sup> This first affirmative decision involved a defendant who was a wealthy white man.<sup>23</sup> A further review of all the New Jersey Supreme Court death penalty decisions since 1982 reveals that in 44 of 60 capital convictions the court failed to uphold the death sentence. In 27 cases the New Jersey Supreme Court failed to uphold a death sentence because of flawed trial court instructions to the jury. The Supreme Court can freely criticize their trial court colleagues since none of these judges can be removed from the bench on this basis. This criticism of trial judge's instructions far exceeded other Supreme Court findings that included a total of six cases of police, prosecutorial, juror or defense counsel misconduct.<sup>24</sup>

After nearly a decade of such Supreme Court decisions in 1990 a *New York Times* article asked "Is Court Killing Death Penalty in New Jersey?" The State's Attorney General argued "the court appeared intent on preventing executions in New Jersey under

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<sup>20</sup>*Byrne Pocket Vetoes a Bill to Restore Death Penalty*, New York Times, Mar. 4, 1978, p. 45; *Gubernatorial Courtesy: A Reply*, New York Times, May 4, 1980, p. NJ32.

<sup>21</sup>NEW JERSEYANS FOR ALTERNATIVES TO THE DEATH PENALTY, BRENDAN T. BYRNE (2000).

<sup>22</sup>*New Jersey's High Court Upholds Death Sentence after Blocking 26*, New York Times, Jan. 25, 1991, Pp. A1-B2.

<sup>23</sup>*New Jersey v Robert O. Marshall*, 123 NJ 1, 586 A2d 85 (1991).

<sup>24</sup>See New Jersey State Supreme Court Decisions, 1985-2007 Lexis Nexis; Tables 1-4.

any circumstances.”<sup>25</sup> Complaints also came from legislators and prosecutors. In November of 1992 there was an unsuccessful move in New Jersey to alter the constitution to put justices on the ballot.<sup>26</sup> In 1992 the state’s voters approved a constitutional amendment to broaden the death penalty. Still no one was executed although there were eventually nine male prisoners on New Jersey’s death row.

### The Abolition Process Begins

A Death Penalty Study Commission was appointed on June 9, 2006 and submitted its report approximately seven months later (January 2, 2007). The report noted that since 1982 there have been 228 capital murder trials. Of these, 60 death sentences were returned by juries. The state Supreme Court overturned 44 death sentences, including the first 28 as indicated above.<sup>27</sup> Republican senator John Russo was alone on the Commission in the minority supporting the death penalty. He claimed that his position on capital punishment was not motivated by: “the death of my father who was killed in his home during the course of a robbery.”<sup>28</sup> He alleged that the problem with capital punishment in New Jersey “is not the statute but rather liberal judges . . . who have consistently disregarded the legislative will and refused to enforce the law as written.”<sup>29</sup>

### Triggering Events: Legislative Hearings and Debate

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<sup>25</sup>*Is Court Killing Death Penalty in New Jersey?*, New York Times, Dec. 1, 1990, Pp. 27-29.

<sup>26</sup>*Legislators Seek to Put Justices on Ballot*, New York Times, Nov. 22, 1992, Pp. 1-14.

<sup>27</sup>NEW JERSEY DEATH PENALTY STUDY COMMISSION, NEW JERSEY DEATH PENALTY STUDY COMMISSION REPORT (2007).

<sup>28</sup>*Id.* at 79.

<sup>29</sup>*Id.* at 82.



Recall that triggering events involve the motivations and tactics of legislative supporters and opponents. Amnesty International reported that Lorry Post who is a murder victim's father actively supported abolition.<sup>30</sup> During assembly debate on the abolition bill Chris Bateman recalled: "In 2001 Lorry Post walked into my legislative office and told me that he had lost his only daughter to murder [and that] the death penalty fails victim families and exacerbates their pain."<sup>31</sup> His experience and that of Senator Russo appear to have set the tone for legislative hearings and debate emphasizing as they did special standing of victim families on the death penalty issue. It is in the context of these triggering events and the structural foundations of New Jersey legal culture that the state's legislative hearings and debate on abolition occurred.

While not a Roman Catholic Lorry Post recalled that his friend "Jack Callahan, is, and Jack guided me around the State House in the early days, having once worked for the State senate, and interestingly enough, particularly sought out those legislators he knew to be Catholic for us to speak to. At the beginning we had only two Assemblymen in our corner, including Assemblyman Caraballo. . . . It was a question of winning others over, one by one."<sup>32</sup> In 2005 Sister Helen Prejean visited New Jersey to lobby against capital punishment in the state legislature and a Catholic high school.<sup>33</sup> Indeed, by 2007 she had made dozens of trips to the state to urge repeal of the death penalty.<sup>34</sup> Roman Catholic Celeste Fitzgerald who was the head of New Jerseyans for Alternatives to the Death

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<sup>30</sup>*Changing Hearts and Minds*, Amnesty International, 2008, p. 22.

<sup>31</sup>*Assembly Sessions*, New Jersey Legislature, Dec. 13, 2007.

<sup>32</sup>L. Post, pers. comm.

<sup>33</sup>*For Pro-Life Nun, State's Death Penalty Deserves Execution*, The Star-Ledger, Dec. 12, 2005, p. 13.

<sup>34</sup>*Assembly to Decide Soon on Repealing Death Penalty*, The Star-Ledger, Nov. 10, 2007, p. 1.

Penalty had an annual organizational budget of \$600,000.<sup>35</sup> Fitzgerald had been working at this since 1999 and in 2008 received an award for her long-term efforts.<sup>36</sup>

The assembly hearings began with an assertion by Wilfredo Caraballo that "this is not a Democratic bill, this is not a Republican bill, this is a bill about the people in the state."<sup>37</sup> Accordingly, during the senate debate Republican Senator Leonard Lance noted that "the Senate Republican Caucus has chosen not to take a position on the issue and each Republican member of the senate will be voting his or her conscience on the issue." Republican Senator Robert Martin, one of the bill's co-sponsors, remembered the compassion of Jesus in the Sermon on the Mount and that "Gandhi [and] Martin Luther King Jr. observed an eye for an eye leaves everyone blind. [And] U.S. Supreme Court Justice Thurgood Marshall . . . urged us to recognize evolving standards of decency."<sup>38</sup>

### *Roman Catholics*

Roman Catholic Bishop John Smith testified that: "over many decades the Catholic Bishops of New Jersey have called for the abolishment of the death penalty. . . . The death penalty takes human life and should be abolished. . . . We cannot teach respect for life by taking a life." To illustrate the point Irish-American prosecutor Thomas Kelaher noted that: "to pick a jury we went through almost 200 people before we were able to seat 14 people . . . who would vote for the death penalty. . . . People released from the jury

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<sup>35</sup>*For a Most Unlikely Lobbyist, a Major Death-Penalty Victory*, The Star-Ledger, Jan. 23, 2006, p. 13.

<sup>36</sup>*Achievements*, The Star-Ledger, Jan. 18, 2008, p. 24.

<sup>37</sup>*Assembly Law and Public Safety Committee*, New Jersey Legislature, Dec. 10, 2007.

<sup>38</sup>*Senate Sessions*, New Jersey Legislature, Dec. 10, 2007.

were concerned with the position of the Church:[and thus the death penalty was] “an exercise in futility.”<sup>39</sup>

The Catholic card was played again by Assemblyman Wilfredo Caraballo: “Sister Helen Prejean, the author of *Dead Man Walking* was here in New Jersey a couple of weeks ago at a state House press conference where she said that New Jersey is going to be a beacon on the hill. The Death Penalty Study Commission found a system that lacks closure . . . Our death penalty is fatally flawed. It creates a false sense of security for those who want to see justice done and it is hurtful to the families of murdered ones who only want to see justice done.” Assembly Majority Leader Bonnie Watson Coleman read a letter from a constituent “As the son of a woman who was murdered and whose killer received life without parole, I can tell you that your vote to repeal the death penalty will save countless families the unnecessary suffering that death penalty processes by their nature entail.”<sup>40</sup>

Yet two opponents of abolition emphasized their Catholicism. Senator Russo noted that he had been a student at Notre Dame and had great respect for Bishop Smith but observed that “I’m a practicing Catholic and have always been pro life” and opposed to abortion, but not to capital punishment. Another opponent of abolition (John Tomicki) noted that he had been educated by “the Jesuits at Fordham” and that they emphasized that executions were approved by the Bible.<sup>41</sup>

Irish-American, Assemblyman Michael Doherty said he was pro life and that was not a contradiction to his support for capital punishment since “Taking an unborn life

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<sup>39</sup>Senate Budget and Appropriations Committee, New Jersey Legislature, Dec. 3, 2007.

<sup>40</sup>Assembly Sessions, New Jersey Legislature, Dec. 13, 2007.

<sup>41</sup>Senate Budget and Appropriations Committee, New Jersey Legislature, Dec. 3, 2007.

that's an innocent individual who has not committed a crime [is always wrong yet while] it's part of the doctrine in the Catholic Church to be against the death penalty [but in actuality] Catholic canon law states that the state has the right to put somebody to death if that individual remains a danger to society."<sup>42</sup> A protestant clergyman, the Rev. Douglas Batchelder from the Fellowship Church of Phillipsburg agreed: "By removing the death penalty you would be communicating the fact that justice in New Jersey is diminished in regard to the value of human life."<sup>43</sup>

### *Victims and Veterans*

Another prosecutor Edward DeFazio argued of the New Jersey death penalty: "It's a cruel hoax on the families of the victims." Vicki Schieber [board member of national Murder Victims for Human Rights] noted that there was no closure with capital punishment. Witness Kathleen Garcia agreed: "Last year I had the honor of serving on the Death Penalty Study Commission with prosecutors DeFazio and Kelaher [and learned about murder survivors] trauma and grief with every new trial; and appeal. . . . What survivors of crime victims need most is certainty in sentencing."<sup>44</sup> Gordon Johnson agreed: "Our law has been on the books since 1982. In that time there has not been a single execution under the law." New Jersey's last execution in fact was on January 22<sup>nd</sup>, 1963, nearly 45 years ago. DeFazio elaborated: "Since the enactment of the death penalty

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<sup>42</sup> *Assembly Sessions*, New Jersey Legislature, Dec. 13, 2007.

<sup>43</sup> *Assembly Law and Public Safety Committee*, New Jersey Legislature, Dec. 10, 2007.

<sup>44</sup> *Senate Budget and Appropriations Committee*, New Jersey Legislature, Dec. 3, 2007.

in 1982 there have been 228 capital murder trials. Juries returned a death sentence in 60 and we have only 9 defendants on death row."<sup>45</sup>

Marilyn Zabinsky asked that the testimony of New Jersey prosecutors DeFazio and Kelaher be taken with a grain of salt: "The two prosecutors (DeFazio and Kelaher who had served on the Death Penalty Study Commission) were coming up for reappointment by the Governor to their positions in the year 2007. And that was still over their heads while the sessions went on and before the report was released."<sup>46</sup>

During legislative debate two members of the senate claimed special standing on the issue of capital punishment, one by virtue of his family's experience with violent crime and the other on the basis of his military service. Senator Robert Singer: "I rise today very troubled by this legislation maybe because my family's been a victim of violent crime twice. . . . [and I] actually wore the uniform and took the oath [and] that was my job" as a police officer. Senator Leonard Connors noted: "I've served in the military. . . Uncle Sam gave you a gun . . . to protect your home territory and the enemy had to be killed and we killed a lot of them and now it is imperative that we protect our families" with capital punishment.<sup>47</sup> This last quote shows how important it was considered to stretch for special standing on this issue. Being in the military was claimed to have significance for capital punishment.

But Republican Assemblyman Chris Bateman noted the special harm to victim's families occasioned by capital punishment: "The death penalty despite necessary precautions and attempts to make it work remains deeply flawed causing nothing but

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<sup>45</sup> *Assembly Law and Public Safety Committee*, New Jersey Legislature, Dec. 10, 2007.

<sup>46</sup> *Id.*

<sup>47</sup> *Senate Sessions*, New Jersey Legislature, Dec. 10, 2007.

delays and pain. . . . The commission heard from dozens of family members and victim's advocates who said that the death penalty had harmed them." Charles Bennett agreed using all the symbols of special standing noting that his daughter and two grandchildren had been murdered and: "As a police officer and United States Marine who served in the Vietnam War I can assure you that I am not testifying in favor of ending the death penalty because of any sympathy for murderers. I am here because my law enforcement experience has shown me that the death penalty has been a colossal failure. It is not a deterrent [and] has only served to hurt victim's families and distract from justice."<sup>48</sup>

#### *Court Cases and Interpretations*

Senator Raymond Lesniak argued that: "We shouldn't have the death penalty unless we're going to use it." Senator Richard Codey concurred: "In 27 years since we reinstituted the death penalty only 9 murderers have been sentenced to die. And none of them have been executed . . . How could I intelligently argue for the deterrent aspect of the death penalty when we in fact have never used it."<sup>49</sup>

On the other hand, Senator Leonard Lance was confident that since New Jersey prosecutors and judges are appointed by the state's governor with "the advice and consent of the Senate [and not elected] there's no question as to the guilt of the 9 persons who have been sentenced to capital punishment in New Jersey." Senator Gerald Cardinale added: "Common sense tell us that penalties deter crime. [But] we haven't used the death penalty in New Jersey." And Senator Ronald Rice agreed: "We have not executed anyone because of the courts. That's the biggest barrier. We need to fix the

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<sup>48</sup> *Assembly Law and Public Safety Committee*, New Jersey Legislature, Dec. 10, 2007.

<sup>49</sup> *Senate Sessions*, New Jersey Legislature, Dec. 10, 2007.

system. In order for deterrent mechanisms to be there punishment must be swift and certain.”<sup>50</sup> In the assembly debate Representative Michael Doherty summed up this position: “The reason the death penalty has not been a deterrent in New Jersey is that we haven’t used it.”<sup>51</sup>

#### Conclusions: The Special Etiquette of Abolition Politics

The Senate vote on the bill on December 10 was 21-16. The Assembly voted 44-36 on December 13. Immediately after the abolition bill passed both houses of the New Jersey legislature pro-choice, protestant Governor Jon Corzine signed it into law.<sup>52</sup> “In a contemplative and at times emotional speech [the governor called this an end to] ‘state endorsed killing’ [adding that capital punishment] ‘undermines our commitment to the sanctity of life.’” And when signing the bill the governor recognized the New Jersey Catholic Conference for creating a “fundamental grassroots groundswell that put pressure on those of us in public service to stand up and do the right thing.”<sup>53</sup> Governor Corzine’s role in abolition cannot be overestimated. He was responsible for appointing all judges, prosecutors as well as some members of the Death Penalty Study Commission.

For many years Governor Corzine had been a contributor of millions of dollars to the archdiocese of New York’s charity to assist inner-city children. New York’s John

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<sup>50</sup>*Id.*

<sup>51</sup>*Assembly Sessions*, New Jersey Legislature, Dec. 13, 2007.

<sup>52</sup>*Corzine Signs Bill Ending Executions, Then Commutes Sentences of 8*, New York Times, Dec. 18, 2007, p. 3.

<sup>53</sup>STATE OF NEW JERSEY OFFICE OF THE GOVERNOR, DEC-17-07 GOVERNOR CORZINE’S REMARKS ON ELIMINATING THE DEATH PENALTY IN NEW JERSEY (2007), available at [www.state.nj.us/governor/news/news/approved/20071217a.html](http://www.state.nj.us/governor/news/news/approved/20071217a.html) (last visited August 4, 2008).

Cardinal O'Connor endorsed an award to Corzine even though some Roman Catholics objected due to the governor's support for abortion rights. Given this lay opposition to his proposed award Corzine asked not to be given this recognition to avoid embarrassment to the Church.<sup>54</sup>

Prior to Governor Corzine's comments when signing the abolition bill Senator Ray Lesniak who sponsored the bill said: "In 1982 I voted to reinstate the death penalty in New Jersey. Today I'd like to thank some folks who helped correct that mistake. The support of the New Jersey bishops lead by Archbishop Smith and the Catholic Conference was of particular significance to me. . . . My struggles with the faith of my baptism and their support strengthened my beliefs. Pope John Paul II would be proud. . . . And I want to thank Governor Corzine for not listening to me when I tried to convince him to change his position against the death penalty when he first ran for the U.S. Senate more than seven years ago."<sup>55</sup>

The special standing in these committee hearings and debate demonstrates the significance of Roman Catholics, victims' families and even military veterans. The central role played by the state supreme court in failing to uphold death sentences was agreed to by both sides, but the meanings attributed to this failure were diametrically opposed. Abolitionists asserted that the law was both ineffective and inhuman, but those yearning for executions argued that the law was only ineffective because it had not been imposed. Here again the Governor's prerogatives in appointing Supreme Court justices played a central role.

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<sup>54</sup>*Corzine Forgoes Award, Citing Divisions on Abortion Views*, New York Times, Dec. 4, 1999, p. B5.

<sup>55</sup>NEW JERSEY SENATE DEMOCRATS, PRESS RELEASES, LESNIAK STATEMENT ON THE SIGNING OF THE DEATH PENALTY BAN (2007).



It was only death penalty supporters who emphasized that they were pro life by being opposed to abortion. Those who testified on behalf of abolition of capital punishment had no need to assert their genuine Catholicism since they stood with the Church hierarchy. The irony is that vigorous Church action against the death penalty was related in time to its aggressive opposition to *Roe vs. Wade* and a woman's new right to freedom of choice. Perhaps the consistency is that those who most vigorously opposed the right of women also opposed the rights of the men on New Jersey's death row. In fact, neither side to the abolition debate adopted a "seamless garment" position consistent with Church teachings.

Some death penalty supporters were less bound by the capital punishment debate etiquette than others. Assemblyman James Holzapfel seemed genuinely piqued and thus asked his colleagues "What would we do if we caught someone similar to Osama Bin Laden tomorrow?" contending that only killing such an individual would be appropriate. His colleague Michael Patrick Carroll agreed saying; "the Left concerns itself very little with the preservation of innocent life except for innocent whales and harp seals. Many of these same folks who shed tears over the fate [of those on death row] can locate not the slightest mode of compassion for the innocent unborn." Yet it was left to Assemblywoman Marcia Karrow to speak in the strongest terms: "the eight monsters that are on death row are monsters. We shouldn't even call them men or humans."<sup>56</sup>

The dominance of the Roman Catholic Church in New Jersey's political culture seems verified by this research. Absent this key structural foundation it is difficult to imagine how an abolition bill would have passed. The triggering events involving

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<sup>56</sup> *Assembly Sessions*, New Jersey Legislature, Dec. 13, 2007.

techniques of legislative sponsors seem clear. The sanctity of life was emphasized without mentioning abortion.

#### Postscript

Given these strong feelings the issue of capital punishment did not vanish. On May 22, 2008 a bill was introduced to reinstate capital punishment for the murder of a law enforcement officer, those under 14, murder during the commission of a sex crime or terrorism.<sup>57</sup> Assemblywoman Marcia Karrow sponsored it along with several of her colleagues. Given the cultural environment and a waiting gubernatorial veto it is hard to imagine success at reinstatement.

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<sup>57</sup>NJ Assembly Bill 2864, Assembly Judiciary Committee "Restores the Death Penalty for Certain Murders," May 22, 2008.

**Table 1: Death Sentences Overturned.**

<i>State of New Jersey v Richard Biegenwald</i> , 106 NJ 13, 524 A2d 130 (1987).
<i>State of New Jersey v Thomas C. Ramseur</i> , 106 NJ 123, 524 A2d 188 (1987).
<i>State of New Jersey v Benjamin Lodato</i> , 107 NJ 141, 526 A2d 204 (1987).
<i>State of New Jersey v Marko Bey</i> , 112 NJ 45, 548 A2d 846 (1988).
<i>State of New Jersey v Marko Bey</i> , 112 NJ 123, 548 A2d 887 (1988).
<i>State of New Jersey v James Jerold Koedatich</i> , 112 NJ 225, 548 A2d 939 (1988).
<i>State of New Jersey v James E. Zola</i> , 112 NJ 384, 548 A2d 1022 (1988).
<i>State of New Jersey v Teddy Rose</i> , 112 NJ 454, 548 A2d 1058 (1988).
<i>State of New Jersey v Walter M. Gerald</i> , 113 NJ 40, 549 A2d 792 (1988).
<i>State of New Jersey v Marie Moore</i> , 113 NJ 239, 550 A2d 117 (1988).
<i>State of New Jersey v James Edward Williams</i> , 113 NJ 393, 550 A2d 1172 (1988).
<i>State of New Jersey v James I. Hunt</i> , 115 NJ 330, 558 A2d 1259 (1989).
<i>State of New Jersey v Darryl Pitts</i> , 116 NJ 580, 562 A2d 1320 (1989).
<i>State of New Jersey v Steven Raymond Davis</i> , 116 NJ 341, 561 A2d 1082 (1989).
<i>State of New Jersey v Anthony Di Frisco</i> , 118 NJ 253, 571 A2d 914 (1990).
<i>State of New Jersey v Kevin Jackson</i> , 118 NJ 484, 572 A2d 607 (1990).
<i>State of New Jersey v Bryan Coyle</i> , 119 NJ 194, 574 A2d 951 (1990).
<i>State of New Jersey v Ronald E. Long, Sr.</i> , 119 NJ 439, 575 A2d 435 (1990).
<i>State of New Jersey v Frank Pennington</i> , 119 NJ 547, 575 A2d 816 (1990).
<i>State of New Jersey v Jacinto K. Hightower</i> , 120 NJ 378, 577 A2d 99 (1990).
<i>State of New Jersey v Anthony Tyrone McDougald</i> , 120 NJ 523, 577 A2d 419 (1990).
<i>State of New Jersey v Walter Johnson</i> , 120 NJ 263, 576 A2d 834 (1990).
<i>State of New Jersey v Roy Savage</i> , 120 NJ 594, 577 A2d 455 (1990).
<i>State of New Jersey v James D. Clausell</i> , 121 NJ 298, 580 A2d 221 (1990).
<i>State of New Jersey v Nathaniel Harvey</i> , 121 NJ 407, 581 A2d 483 (1990).
<i>State of New Jersey v Samuel Leon Moore</i> , 122 NJ 420, 585 A2d 864 (1991).
<i>State of New Jersey v Walter Edward Oglesby</i> , 122 NJ 522, 585 A2d 916 (1991).
<i>State of New Jersey v Arthur Perry</i> , 124 NJ 128, 590 A2d 624 (1991).
<i>State of New Jersey v Phillip Dixon</i> , 125 NJ 223, 593 A2d 266 (1991).
<i>State of New Jersey v Richard Biegenwald</i> , 126 NJ 1, 594 A2d 172 (1991).
<i>State of New Jersey v Samuel Erazo</i> , 126 NJ 112, 594 A2d 232 (1991).
<i>State of New Jersey v Braynard Purnell</i> , 126 NJ 518, 601 A2d 175 (1992).
<i>State of New Jersey v Bobby Lee Brown</i> , 138 NJ 481, 651 A2d 19 (1994).
<i>State of New Jersey v Rigoberto Mejia AKA Martin Gamez</i> , 141 NJ 475, 662 A2d 308 (1995).
<i>State of New Jersey v Jacinto K. Hightower</i> , 146 NJ 239, 680 A2d 649 (1996).
<i>State of New Jersey v Leslie A. Nelson AKA Glen Nelson</i> , 155 NJ 487, 715 A2d 281 (1998).
<i>State of New Jersey v Thomas J. Koskovich</i> , 168 NJ 448, 776 A2d 144 (2001).
<i>State of New Jersey v Peter Papasavvas</i> , 170 NJ 462, 790 A2d 798 (2002).
<i>State of New Jersey v Daron Josephs</i> , 174 NJ 44, 803 A2d 1074 (2002).
<i>State of New Jersey v Leslie Ann Nelson</i> , 173 NJ 417, 803 A2d 1 (2002).
<i>State of New Jersey v Steven R. Fortin</i> , 178 NJ 540, 843 A2d 974 (2004).
<i>State of New Jersey v John Chew</i> , 179 NJ 186, 844 A2d 487 (2004).

<i>State of New Jersey v Charles E. Reddish, Jr.</i> , 181 NJ 553, 859 A2d 1173 (2004).
<i>State of New Jersey v Anthony Di Frisco</i> , 187 NJ 156, 900 A2d 820 (2006).

**Table 2: Death Sentences Affirmed.**

<i>State of New Jersey v Robert O. Marshall</i> , 123 NJ 1, 586 A2d 85 (1991).
<i>State of New Jersey v Marko Bey</i> , 129 NJ 557, 610 A2d 814 (1992).
<i>State of New Jersey v John Martini, Sr.</i> , 131 NJ 176, 619 A2d 1208 (1993).
<i>State of New Jersey v Anthony Di Frisco</i> , 137 NJ 434, 645 A2d 734 (1994).
<i>State of New Jersey v Joseph Harris</i> , 141 NJ 525, 662 A2d 333 (1995).
<i>State of New Jersey v Donald Loftin</i> , 146 NJ 295, 680 A2d 677 (1996).
<i>State of New Jersey v John Chew</i> , 150 NJ 30, 695 A2d 1301 (1997).
<i>State of New Jersey v Nathaniel Harvey</i> , 151 NJ 117, 699 A2d 596 (1997).
<i>State of New Jersey v David Cooper</i> , 151 NJ 326, 700 A2d 306 (1997).
<i>State of New Jersey v Richard Feaster</i> , 156 NJ 1, 716 A2d 395 (1998).
<i>State of New Jersey v Ambrose A. Harris</i> , 156 NJ 122, 716 A2d 458 (1998).
<i>State of New Jersey v Robert W. Morton</i> , 155 NJ 383, 715 A2d 228 (1998).
<i>State of New Jersey v Robert R. Simon</i> , 161 NJ 416, 737 A2d 1 (1999).
<i>State of New Jersey v Jesse Timmendequas</i> , 161 NJ 515, 737 A2d 55 (1999).
<i>State of New Jersey v Peter Papasavvas</i> , 163 NJ 565, 751 A2d 40 (2000).
<i>State of New Jersey v Brian Wakefield</i> , 190 NJ 397, 921 A2d 954 (2007).

**Table 3: Death Sentences Overturned Due to Flawed Jury Instructions.**

<i>State of New Jersey v Richard Biegenwald</i> , 106 NJ 13, 524 A2d 130 (1987).
<i>State of New Jersey v Thomas C. Ramseur</i> , 106 NJ 123, 524 A2d 188 (1987).
<i>State of New Jersey v Marko Bey</i> , 112 NJ 123, 548 A2d 887 (1988).
<i>State of New Jersey v James Jerold Koedatich</i> , 112 NJ 225, 548 A2d 939 (1988).
<i>State of New Jersey v James E. Zola</i> , 112 NJ 384, 548 A2d 1022 (1988).
<i>State of New Jersey v Teddy Rose</i> , 112 NJ 454, 548 A2d 1058 (1988).
<i>State of New Jersey v Marie Moore</i> , 113 NJ 239, 550 A2d 117 (1988).
<i>State of New Jersey v James I. Hunt</i> , 115 NJ 330, 558 A2d 1259 (1989).
<i>State of New Jersey v Darryl Pitts</i> , 116 NJ 580, 562 A2d 1320 (1989).
<i>State of New Jersey v Steven Raymond Davis</i> , 116 NJ 341, 561 A2d 1082 (1989).
<i>State of New Jersey v Bryan Coyle</i> , 119 NJ 194, 574 A2d 951 (1990).
<i>State of New Jersey v Ronald E. Long, Sr.</i> , 119 NJ 439, 575 A2d 435 (1990).
<i>State of New Jersey v Frank Pennington</i> , 119 NJ 547, 575 A2d 816 (1990).
<i>State of New Jersey v Jacinto K. Hightower</i> , 120 NJ 378, 577 A2d 99 (1990).
<i>State of New Jersey v Anthony Tyrone McDougald</i> , 120 NJ 523, 577 A2d 419 (1990).
<i>State of New Jersey v James D. Clausell</i> , 121 NJ 298, 580 A2d 221 (1990).
<i>State of New Jersey v Nathaniel Harvey</i> , 121 NJ 407, 581 A2d 483 (1990).
<i>State of New Jersey v Samuel Leon Moore</i> , 122 NJ 420, 585 A2d 864 (1991).
<i>State of New Jersey v Walter Edward Oglesby</i> , 122 NJ 522, 585 A2d 916 (1991).
<i>State of New Jersey v Phillip Dixon</i> , 125 NJ 223, 593 A2d 266 (1991).
<i>State of New Jersey v Samuel Erazo</i> , 126 NJ 112, 594 A2d 232 (1991).
<i>State of New Jersey v Bobby Lee Brown</i> , 138 NJ 481, 651 A2d 19 (1994).

<i>State of New Jersey v Rigoberto Mejia AKA Martin Gamez</i> , 141 NJ 475, 662 A2d 308 (1995).
<i>State of New Jersey v Thomas J. Koskovich</i> , 168 NJ 448, 776 A2d 144 (2001).
<i>State of New Jersey v Daron Josephs</i> , 174 NJ 44, 803 A2d 1074 (2002).
<i>State of New Jersey v Leslie Ann Nelson</i> , 173 NJ 417, 803 A2d 1 (2002).
<i>State of New Jersey v Charles E. Reddish, Jr.</i> , 181 NJ 553, 859 A2d 1173 (2004).

**Table 4: Death Sentences Overturned Due to Police, Prosecutorial, Juror or Defense Counsel Misconduct.**

<i>State of New Jersey v Marko Bey</i> , 112 NJ 45, 548 A2d 846 (1988).
<i>State of New Jersey v Teddy Rose</i> , 112 NJ 454, 548 A2d 1058 (1988).
<i>State of New Jersey v Walter Johnson</i> , 120 NJ 263, 576 A2d 834 (1990).
<i>State of New Jersey v Nathaniel Harvey</i> , 121 NJ 407, 581 A2d 483 (1990).
<i>State of New Jersey v Jacinto K. Hightower</i> , 146 NJ 239, 680 A2d 649 (1996).
<i>State of New Jersey v Leslie Ann Nelson</i> , 173 NJ 417, 803 A2d 1 (2002).